

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

HAZEL SHELTON,)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
LINCOLN NATIONAL LIFE INSURANCE)	
COMPANY d/b/a LINCOLN FINANCIAL)	
GROUP,)	
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant The Lincoln National Life Insurance Company d/b/a Lincoln Financial Group (“Lincoln” or “Defendant”) files this Notice to remove to this Court an action brought against it and currently pending in the Circuit Court of Hamblen County, Tennessee, bearing Docket No. 13cv175, and with respect thereto, would show this Court as follows:

I.

The above-styled cause was commenced in the Circuit Court of Hamblen County, Tennessee, Case No. 13cv175, by virtue of a Complaint filed by Plaintiff Hazel Shelton (“Shelton” or “Plaintiff”) on August 22, 2013, and the Amended Complaint filed on September 6, 2013, against Lincoln.

II.

Plaintiff served Lincoln with a copy of the Amended Complaint and Summons through service on Lincoln National's statutory agent for the service of process in the State of Tennessee, Commissioner of Insurance, on September 12, 2013. The Tennessee Department of Commerce and Insurance served Lincoln National with a copy of the Amended Complaint and Summons

through service on Lincoln National's registered agent for service of process in the State of Tennessee, Corporation Service Company, on September 19, 2013, a date less than 30 days before the filing of this Notice of Removal. Pursuant to 28 U.S.C. § 1446(a), a copy of the Complaint and Amended Complaint, along with copies of process, are attached hereto and made a part of this Notice by reference.

III.

This action is one of a civil nature for damages claimed as a result of alleged breach of a long term disability ("LTD") insurance contract by the Defendant. Plaintiff was a participant in an insurance policy purchased through Lincoln ("Policy"). *See* Amended Complaint, ¶¶ 6-9; Declaration of Cindy Daly, ¶ 3 attached hereto as **Exhibit A** (hereinafter referred to as the "Daly Decl., ¶ 5")¹. Plaintiff's action is civil in nature, there is complete diversity jurisdiction, and this Court has jurisdiction over Plaintiff's action under the provisions of 28 U.S.C. § 1332(a)(1) and (c)(1) and 28 U.S.C. § 1441, et seq. Upon information and belief, Plaintiff is a citizen of the State of Tennessee. *See* Amended Complaint ¶ 1. Defendant is a corporation organized in the State of Indiana, and its principal place of business is located in Radnor, PA. Daly Decl., ¶ 8.

While Plaintiff's Amended Complaint does not allege a specific total monetary amount of damages, the Amended Complaint seeks damages for breaching his LTD Plan (Amended Complaint, ¶ 19(a)), asks for treble damages (Amended Complaint, at ¶ 19(b)), requests a statutory penalty under Tenn. Code Ann. § 56-7-405 (Amended Complaint, ¶ 19(c)), and seeks costs (Amended Complaint, ¶ 19). Plaintiff's Amended Complaint also alleges that Lincoln failed to act in good faith. (Amended Complaint, ¶ 14). As such, a fair reading of the Plaintiff's

¹ The Declaration of Cindy Daly has been filed contemporaneously with and in support of this Notice of Removal.

Amended Complaint establishes that the amount in controversy more likely than not exceeds \$75,000.00.

Plaintiff's potential recovery of his LTD benefits far exceeds the jurisdictional minimum. The total potential benefits at issue are \$108,657.92. Daly Decl., ¶ 7. Plaintiff alleges that her "disability" arose on or about May 10, 2011. Daly Decl., ¶ 5. Lincoln National initially determined that Plaintiff was eligible to receive LTD benefits under the LTD Policy, and it paid LTD benefits to the Plaintiff from the end of the elimination period, November 6, 2011, until January 6, 2012. *Id.*

The gross Monthly Benefit under the Policy is \$1,743.04. Daly Decl., ¶ 6. As of January 1, 2012, the Plaintiff was awarded social security disability benefits in the monthly amount of \$1,048, which would reduce her monthly LTD benefits to \$695.04 per month from that date forward. *Id.* In the event Plaintiff prevails on her claim for benefits asserted in the lawsuit, the remaining 22 months of her own occupation period of disability under the Policy would therefore be worth \$15,290.88. *Id.*

In the event Plaintiff prevails on her claim for benefits asserted in the lawsuit and she remains disabled beyond the expiration of the own occupation period of disability through the maximum benefit period under the Policy, the remaining stream of benefits could be worth \$93,367.04. Daly Decl., ¶ 7. Together with the remaining own occupation period benefits, the total potential benefits at issue are \$108,657.92. *Id.*

IV.

The time period within which Lincoln is required to file this Notice of Removal pursuant to 28 U.S.C. § 1446 has not yet expired. Lincoln was served no earlier than September 12, 2013.

V.

Defendant files herewith a copy of all process, pleadings, and orders served upon it in this action. Since the date on which the Defendant was served with the summons and a copy of the Complaint and Amended Complaint, there have been no other proceedings in this case in the Circuit Court of Hamblen County, Tennessee.

VI.

Notice to the Circuit Court of Hamblen County, Tennessee, which attaches a duplicate of this Notice of Removal to federal court, is being filed with the Clerk of the Circuit Court of Hamblen County, Tennessee, as required by 28 U.S.C. § 1446(d).

VII.

Notice of the filing of this Notice of Removal will be sent to the Plaintiff, the only adverse party, as required by 28 U.S.C. § 1446(d).

VIII.

The allegations of this Notice are true and correct and within the jurisdiction of the United States District Court for the Eastern District of Tennessee and, as noted above, this cause of action is believed to be removable to the United States District Court for the Eastern District of Tennessee.

WHEREFORE, Defendant files this Notice for the purpose of removing this action from the Circuit Court of Hamblen County, Tennessee, to the United States District Court for the Eastern District of Tennessee.

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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By: s/Cameron S. Hill